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**MasterCard
International**



Via Electronic Mail

July 23, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. OP-1196

Dear Ms. Johnson:

Mastercard International Incorporated ("Mastercard")¹ submits this comment letter in response to the Notice of Study and Request for Information (the "Notice") issued by the Board of Governors of the Federal Reserve System (the "Board") soliciting comments regarding the disclosure of certain debit card fees. Mastercard appreciates the opportunity to provide comments in response to the Notice.

The Notice requests comment on whether existing disclosures required by the Electronic Fund Transfer Act ("EFTA") adequately inform consumers about fees imposed for use of a debit card at the point-of-sale. As discussed in greater detail below, Mastercard believes that the existing disclosure requirements adequately inform consumers regarding such fees. Moreover, any changes that would require new disclosures at the point-of-sale would be extremely difficult and costly to implement and would provide marginal, if any, benefits to consumers.

Background and Summary

The EFTA and its implementing regulation — Regulation E — require a financial institution that holds a consumer's debit card account (an "Account-Holding Institution") to make a number of disclosures to the consumer regarding fees that may be imposed for electronic fund transfers ("EFTs"), including any fees for point-of-sale transactions. For example, as part of the "initial disclosures" Regulation E requires that the Account-Holding Institution must disclose "[a]ny fees imposed by the financial institution for

¹ Mastercard is an SEC-registered private share corporation that licenses financial institutions to use the Mastercard service marks in connection with a variety of payments systems, including stored value cards.

electronic fund transfers or for the right to make transfers.” 12 CFR 205.7(b)(5). These initial disclosures must be provided when the consumer contracts for an EFT service, or before the first EFT is made on the consumer’s account. In addition, if an Account-Holding Institution increases any fee imposed on the consumer, it must provide a notice to the consumer at least 21 days prior to the effective date of the increase. 12 CFR 205.8(a)(1)(i).

Moreover, in any month in which the consumer incurs such a fee, the consumer receives a new disclosure regarding that fee. Specifically, every periodic statement sent to the consumer must disclose “[t]he amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.” 12 CFR 205.9(b)(3). Mastercard notes that the Board has interpreted the periodic statement disclosure requirement to permit Account-Holding Institutions to disclose the fees charged in connection with EFTs, including point-of-sale fees, on an itemized or aggregated basis.

Based on this existing disclosure scheme, Mastercard believes that any additional disclosures would be unnecessary. The initial disclosure requirements essentially mandate that the consumer must be informed of any fee before the consumer is obligated to pay that fee. In addition, disclosures on the periodic statement provide a reminder of the fee in any month in which the consumer has incurred the fee. Any additional disclosures regarding the fee would be duplicative of the existing disclosures and would be unnecessary.

It also is important to note that a number of alternative disclosure concepts the Board inquires about in the Notice would be extremely costly and difficult to implement. In particular, any requirement that fees imposed by an Account-Holding Institution must be disclosed at the point-of-sale could not be implemented under existing system structures. Such a requirement essentially would mandate that debit card systems be restructured to enable an Account-Holding Institution to communicate fee information through the various systems and system participants involved in the transaction to the merchant for disclosure at the point-of-sale.

Alternative Disclosure Approaches

Point-of-Sale Disclosures

The Notice includes a request for comment on requiring additional fee disclosures to be provided at the point-of-sale, such as on the receipt provided to the consumer by the merchant. Such a requirement would not be feasible based on MasterCard’s existing payment system network, and would be extremely costly to financial institutions, payments systems, and merchants.

It is important for us to note that the only interaction between the Account-Holding Institution and the merchant at the point-of-sale is through the authorization process. In the debit context, authorization is the process by which a transaction is approved by the Account-Holding Institution or, in certain circumstances, by Mastercard or others on behalf of the Account-Holding Institution in accordance with the Account-Holding

Institution's instructions. The Mastercard authorization system is a worldwide network designed for near-instantaneous transmission of card data and authorization results among the participants in our system. In a typical transaction, the merchant, or the merchant's bank (also known as an "acquirer"), requests authorization for the transaction from the Account-Holding Institution, and authorization is granted or denied based on criteria established by the Account-Holding Institution. In many instances, Mastercard provides stand-in authorization, or authorization on behalf of the Account-Holding Institution, when the Account-Holding Institution cannot be contacted within an established timeframe. The authorization system is designed to rapidly provide basic information enabling the merchant to complete the transaction.

Any mandate that fees be disclosed at the point-of-sale would require enormously expensive changes to the systems used in connection with the authorization process, and even then, the fee disclosures would not necessarily be feasible. First, the more than 23,000 financial institutions that participate in the Mastercard system would be required to modify their existing authorization programs to accommodate the new disclosures. Mastercard itself would have to implement upgrades to accommodate the transmission of fee information, as well. Second, requiring the communication of fee information would likely degrade the performance of the authorization systems. In this regard, the authorization system is designed to provide near-instantaneous communication of information so that merchants and consumers can complete transactions quickly and conveniently. Any requirement that the process include a determination by the Account-Holding Institution as to whether a fee may be imposed will invariably slow down the authorization process and involve delays in processing transactions at the point-of-sale. Third, millions of merchants would be required to upgrade their terminals at point-of-sale to ensure that the fee disclosure can be made. Fourth, even if the required modifications could be implemented, it still would not be possible to communicate fee information in connection with many transactions. For example, as noted above, in many cases Mastercard (or third-party processors) performs stand-in authorization for the Account-Holding Institution. Under these circumstances, the authorization is completed without accessing directly the Account-Holding Institution's records. As a result, such authorization processes do not include the ability to even determine the fee that may be imposed on a consumer by the Account-Holding Institution.

We also note that any disclosure of fees imposed by the Account-Holding Institution at the point-of-sale would be unprecedented. Indeed, we are not aware of any circumstance in which a fee imposed by an Account-Holding Institution (or a card issuer in the case of a credit card) must be disclosed at the point-of-sale. For example, the fee disclosures required in connection with an ATM transaction involve the fees imposed by the operator of the ATM terminal, not the fees imposed by the Account-Holding Institution. In all circumstances of which we are aware, fees imposed by the Account-Holding Institution (or card issuer) are covered in initial disclosures and in periodic statement disclosures. We are not aware of any rationale for requiring the disclosures of such fees in this context at the point-of-sale. Accordingly, in view of the enormous costs that would be associated with making such fee disclosures, and the operational limitations on the abilities of our payments system (and similar systems) to accommodate such disclosures, requiring such disclosures would be impossible to justify.

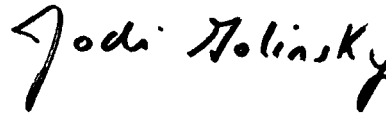
Periodic Statement Disclosures

As discussed above, we believe that the existing periodic statement disclosures adequately inform consumers of any fees imposed by the Account-Holding Institutions. As a result, any new disclosures may be difficult to justify, particularly in view of the costs associated with modifying systems in order to make such disclosures. Any new disclosures of cumulative fees incurred over a period of time would be particularly problematic. Requiring cumulative disclosures would be extremely costly and would provide little, if any, benefit to consumers.

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Once again, Mastercard appreciates the opportunity to respond to the Notice. If you have any questions concerning the comments contained in this letter, or if Mastercard may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,

A handwritten signature in black ink that reads "Jodi Golinsky". The signature is written in a cursive, flowing style.

Jodi Golinsky
Vice President and
Senior Regulatory Counsel

cc: Michael F. McEneney, Esq.